



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2019-0164; FRL-9993-70-Region 2]

Approval of Air Quality Implementation Plans; New Jersey; Determination of Attainment for the 1971 Sulfur Dioxide National Ambient Air Quality Standard; Warren County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make the determination that the Warren County Sulfur Dioxide (SO₂) Nonattainment Area has attained the 1971 SO₂ primary and secondary National Ambient Air Quality Standard (NAAQS). This action does not constitute a redesignation to attainment. The Warren County Nonattainment Area will remain nonattainment for the 1971 primary and secondary NAAQS until EPA determines that the Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. If the EPA finalizes this rule, certain attainment planning requirements will be suspended for so long as the area remains in attainment of the NAAQS. This action is being taken under the CAA.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-2019-0164** at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, (212) 637-3702, or by email at fradkin.kenneth@epa.gov.

I. Background

a. Nonattainment Designation

The EPA designated all of Warren County, New Jersey as attainment for the 1971 SO₂ primary and secondary NAAQS on March 3, 1978 (43 FR 8962). On December 31, 1987 (52 FR 49408), the EPA redesignated portions of Warren County as nonattainment for both the primary and secondary 1971 SO₂ NAAQS at the request of the State of New Jersey (the State) to revise

the air quality designation for the area identified in the State's request. EPA issued a minor correction to the redesignation on March 14, 1988 (53 FR 8182).

The 1971 SO₂ NAAQS consisted of two primary standards for the protection of public health and one secondary standard for the protection of public welfare. The primary SO₂ NAAQS addressed 24-hour average and annual average ambient SO₂ concentrations. The secondary standard addressed 3-hour average ambient SO₂ concentrations. The level of the annual SO₂ standard was 0.03 parts per million (ppm) (or 80 micrograms per cubic meter (µg/m³)) not to be exceeded in a calendar year. See 40 CFR 50.4(a). The level of the 24-hour standard was 0.14 ppm (or 365 µg/m³), not to be exceeded more than once per calendar year. See 40 CFR 50.4(b). The level of the secondary SO₂ standard is a 3-hour standard of 0.5 ppm (or 1300 µg/m³), not to be exceeded more than once per calendar year. See 40 CFR 50.5(a).

The EPA subsequently finalized a revised, more stringent SO₂ primary NAAQS that included a shorter 1-hour averaging period on June 2, 2010.¹ The 2010 SO₂ primary standard was set at a level of 75 parts per billion (ppb) (or 196.4 µg/m³) based on the 3-year average of the annual 99th percentile of daily maximum 1-hour average SO₂ concentrations. See 40 CFR 50.17(a)-(b). The EPA provided that the 24-hour and annual standards were to be revoked for all areas one year after their individual designations under the 2010 primary NAAQS, except for areas previously designated nonattainment that did not have an approved SIP for the new 1-hour standard. See 40 CFR 50.4(e). The 3-hour secondary NAAQS remains in effect. The EPA designated² all of New Jersey, including Warren County, for the new primary, one hour 75 ppb 2010 SO₂ NAAQS as attainment/unclassifiable on December 21, 2017.

¹ See 75 FR 35520, June 22, 2010.

² See 83 FR 1098, January 9, 2018.

The EPA initially designated all of Warren County, which is part of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (AQCR), as “better than national standards” (otherwise known as “attainment”) for the 1971 primary and secondary SO₂ NAAQS on March 3, 1978 (43 FR 8962). On April 30, 1986 and June 26, 1986, the New Jersey Department of Environmental Protection (NJDEP) submitted a request to EPA to revise the air quality designation for parts of Warren County from “attainment” to “nonattainment” with respect to the 1971 primary and secondary SO₂ NAAQS. The EPA revised the designations for those parts of Warren County to “does not meet standards” (otherwise known as “nonattainment”) based on the State’s request under section 107 of the CAA and the EPA’s assessment of air dispersion screening modeling performed by the NJDEP and others that showed portions of Warren County were in violation of the NAAQS.

The boundaries of the nonattainment area were based on the results of New Jersey’s Valley screening model analysis to determine the impact from the Martins Creek Generating Station (i.e., Martins Creek), located in Northampton, Pennsylvania (PA) and other nearby sources, to elevated terrain in Warren County out to 14 kilometers from Martins Creek. New Jersey modeled eight existing major sources³ at the time in the AQCR using worst-case meteorology in the Valley screening model analysis. The emission rates for the Pennsylvania sources included in the modeling dwarfed those from the New Jersey facilities; emissions from the Pennsylvania sources were up to two orders of magnitude higher than those from New Jersey facilities. The highest emission rates were from Martins Creek, and the Portland Generating Station (i.e., Portland), which was also located in Northampton, PA.

³ Pennsylvania sources evaluated were Martins Creek, Metropolitan Edison (later known as Portland Generating Station), Bethlehem Steel, Coplay Cement, Hercules Cement, and Lone Star. New Jersey sources were Hoffman LaRoche and Ingersoll-Rand.

The December 31, 1987 nonattainment redesignation for Warren County included the entire Townships of Harmony, Oxford, White, and Belvidere, and portions of Liberty⁴ and Mansfield⁵ Townships. See 52 FR at 49411, 53 FR 8182, and 40 CFR 81.331. The remaining portion of Warren County remained designated as attainment. The designated nonattainment area included impacted areas in New Jersey only as determined by the Valley screening modeling and did not include the areas in PA where the large contributing sources were located such as the Martins Creek and Portland facilities.

Since the December 1987 redesignation, SO₂ emissions have been reduced considerably from contributing sources due to the shut-down of coal-fired boilers at Martins Creek and Portland. Martins Creek coal fired units were shut down in September 2007 (and removed approximately one year later). Portland coal-fired units were shut down in June 2013 (Unit 2), and May 2014 (Unit 1). Further background information can be found in the Technical Support Document (TSD) for this rulemaking, located in the docket.

New Jersey was required to submit an attainment SIP to the EPA within 18 months⁶ of November 15, 1990, or May 15, 1992. The Warren County Nonattainment Area was required to attain the NAAQS within five years⁷ after November 15, 1990. Therefore, the Warren County SO₂ Nonattainment Area's attainment date was November 15, 1995.

On June 14, 2018, the Center for Biological Diversity, Center for Environmental Health, and Sierra Club (CBD) filed suit against the EPA in the U.S. District Court for the Northern District of California seeking to compel the EPA to, among other things, determine that New Jersey had failed to submit a required SIP for the New Jersey portion of the Northeast

⁴ Portions of Liberty south of UTM coordinate N4522 and West of UTM E505 (See 53 FR 8182, March 14, 1988).

⁵ Portions of Mansfield west of UTM E505 (See 53 FR 8182, March 14, 1988).

⁶ CAA §191(b).

⁷ CAA §192(b).

Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment area, and amended that complaint on December 17, 2018. See *Center for Biological Diversity, et al., v. Wheeler*, Civ. No. 18-cv-3544-YGR (N.D. Cal.). This case is still pending.

The NJDEP submitted a request on August 17, 2018 for the EPA to make the determination that the Warren County SO₂ Nonattainment Area had attained the 1971 primary and secondary SO₂ NAAQS (Warren County SO₂ Clean Data Request). This request can be found in the docket for this rulemaking.

b. The EPA's Clean Data Policy

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble). See 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretations in the General Preamble of CAA sections 171, 172, and 182, EPA set forth what has become known as its “Clean Data Policy” for the 1-hour ozone NAAQS.⁸ EPA’s Clean Data Policy represents the Agency’s interpretation that certain nonattainment area planning requirements of part D of the CAA are suspended for areas that are attaining the NAAQS. The specific requirements that are suspended by a determination of attainment, also known as a Clean Data Determination (CDD), include those measures that are designed to help an area that is not attaining the standard plan for and achieve attainment, i.e., the attainment demonstration, reasonably available control measures (RACM), reasonable further progress measures, and contingency measures for failure to meet deadlines for RFP and attainment by the attainment date.

⁸ See Memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, “RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” May 10, 1995.

EPA has applied this interpretation of the CAA to the implementation of nearly every criteria pollutant in individual area notice-and-comment rulemakings suspending certain attainment-planning requirements,⁹ in national implementation rules for ozone and particulate matter NAAQS,¹⁰ and in the most recent implementation guidance document for sulfur dioxide¹¹. EPA's Clean Data Policy interpretation has been upheld by multiple courts.¹² When states request that the EPA make a CDD of a designated SO₂ NAAQS nonattainment area, the EPA will determine whether an area has attained the NAAQS based on air quality monitoring data (when available) and air quality dispersion modeling information for the affected area as necessary. A CDD does not constitute a formal redesignation to attainment. If the EPA subsequently determines that an area is no longer attaining the standard, those requirements that were suspended by the CDD once again apply.

II. Summary of New Jersey CDD Request and the EPA Analysis

In its August 17, 2018 CDD request, the NJDEP provided several analyses to demonstrate that the Warren County SO₂ Nonattainment Area's air quality is meeting the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. The information submitted includes ambient air quality data and interpretive analysis for air monitoring sites located in the vicinity of the Warren County Nonattainment Area and recorded into the EPA's Air Quality System (AQS); ambient air quality data from a special study (i.e., Warren County Air Monitoring Project) within the Warren County Nonattainment Area; and SO₂ emissions trends both within Warren County and from

⁹ See, e.g., 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, 1-hour ozone); 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM₁₀); 78 FR 66280 (November 5, 2013) (Bellefontaine, Ohio, Pb).

¹⁰ 70 FR 71612 (November 29, 2005) (Final Rule to Implement the [1997] 8-Hour Ozone National Ambient Air Quality Standard-Phase 2); 72 FR 20586 (April 25, 2007) (Clean Air Fine Particle Implementation Rule); 80 FR 12264 (March 6, 2015) (Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements); 81 FR 58010 (August 24, 2016) (Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements).

¹¹ Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions (April 2014).

¹² See, e.g., *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996).

principal sources associated with the SO₂ nonattainment designation. Additionally, New Jersey provided a list of existing SIP-approved measures and other federally enforceable measures, pursuant to permitting requirements under the CAA, that apply to SO₂ sources both within the Warren County Nonattainment Area, and to principal sources associated with the 1987 SO₂ nonattainment designation under the 1971 NAAQS.

In our analysis, the EPA considered an air dispersion modeling study performed in the late 1990s to evaluate the impacts of Martins Creek, Portland, and other sources in the Warren County Nonattainment Area. The EPA also considered SO₂ emissions trends, and control measures both within Warren County and from the primary contributing sources. Additionally, EPA considered ambient air quality data from the Columbia, NJ; Chester, NJ; and Easton, PA air monitoring sites in AQS; as well as from the Warren County Air Monitoring Project Special Study. Finally, the EPA also evaluated, and considered New Jersey's analysis to estimate SO₂ concentrations in the Warren County Nonattainment Area based on the interpolation of data from the Columbia, NJ; Chester, NJ; and Easton, PA air monitoring sites.

The primary emission sources that caused violations of the 1971 SO₂ NAAQS, namely Martins Creek and Portland, have dramatically reduced emissions. Martins Creek, which in 1990 emitted 33,300 tons of SO₂ per year, has shut down its coal-fired boilers, and the remaining oil-fired boilers are currently emitting an average of 88 tons of SO₂ per year. Portland, which in 1990 emitted 25,400 tons of SO₂ per year, has shut down its coal units, and is currently emitting less than 0.5 tons of SO₂ per year. No other source in the area emits more than 15 tons of SO₂ per year. Modeling conducted in June 1999 showed that attainment could be assured with only slight reductions in then allowable emissions, indicating the dramatic subsequent reductions in the emissions of Martins Creek and Portland have caused the area now to attain the 1971 standards.

In the current absence of significant sources in the area, the monitoring data that is available from various sites within Warren County and neighboring counties may be considered indicative of current air quality. These monitors show concentrations well below the 1971 NAAQS

A detailed summary of the EPA's review and rationale for this proposed CDD may be found in the TSD, located in the docket. Based on the EPA's analysis, the EPA agrees with New Jersey that the area is meeting attainment and is proposing to make the determination that the Warren County Nonattainment Area has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS.

III. Proposed Action

The EPA proposes to make the determination that the Warren County Nonattainment Area has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. This proposed "Clean Data Determination" is based on air quality monitoring data, air quality dispersion modeling information, as well as other supporting information indicated in the proposal. If the EPA finalizes this determination that the area has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS, it would suspend the requirements for the State to submit a reasonable further progress plan, attainment demonstration, contingency measures and any other planning SIP relating to attainment of the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS for so long as the Warren County Nonattainment Area continues to meet each NAAQS. Although these requirements would be suspended, the EPA would not be precluded from acting upon these elements at any time if submitted to the EPA for review and approval.

Issuance of a CDD would not constitute a redesignation of the Warren County Nonattainment Area to attainment for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS under CAA section 107(d)(3). Neither does the proposed CDD involve approving any maintenance

plan for the Warren County Nonattainment Area, nor does it serve as a determination that the Warren County Nonattainment Area has met all the requirements for redesignation under the CAA; any such redesignation would require, among other things, that the attainment is attributable to permanent and enforceable measures. Therefore, the designation status of the Warren County Nonattainment Area will remain nonattainment for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS until such time as the EPA takes final rulemaking action to determine that the Warren County Nonattainment Area meets the CAA requirements for redesignation to attainment. The EPA is soliciting public comments on the issues discussed in this document. Public comments will be considered before the EPA takes final action.

IV. Statutory and Executive Order Reviews

This action proposes to make an attainment determination based on air quality data and other information would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 1985, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the attainment determination would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: May 1, 2019.

Peter D. Lopez,
Regional Administrator,
Region 2.

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